

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JERRY VANDIVER,

Plaintiff,

v.

Case No. 05-CV-72835-DT

CORRECTIONAL MEDICAL SERVICES, INC.,
ET AL,

Defendants.

**OPINION AND ORDER DENYING PLAINTIFF'S
"MOTION FOR RECONSIDERATION" AS MOOT**

Pending before the court is Plaintiff's motion, filed on October 12, 2006, to reconsider the opinion and order of this court of September 29, 2006 that adopted in part and rejected in part the August 30, 2006 report and recommendation of the magistrate judge. On October 23, 2006, Plaintiff filed a notice of appeal of this court's September 29, 2006 order. The court thus lacks jurisdiction.¹ See e.g. *Pittock v. Otis Elevator Co.*, 8 F.3d 325, 327 (6th Cir. 1993) (holding that a district court does not retain jurisdiction over a motion for reconsideration if a notice of appeal from the underlying order is filed before the court rules on the motion). Accordingly,

¹ Had the court reached the merits of Plaintiff's motion, it would have accepted as factually true Plaintiff's objection that Defendant Hazel Austin was in fact served. The court, however, expresses no view regarding whether correction of that factual error would have (as required under the standard for reviewing a motion for reconsideration) led to a different disposition of the case, which in part was a rejection of the magistrate judge's recommendation to dismiss Austin from the case.

IT IS ORDERED that Plaintiff's "Motion for Reconsideration" [Dkt #107] is DENIED AS MOOT.

s/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: October 26, 2006

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, October 26, 2006, by electronic and/or ordinary mail.

s/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522